

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 619 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

JAYANTILAL M SHAH

Versus

STATE OF GUJARAT

Appearance:

MR AJAY LAKHIA for Petitioners
MR DP JOSHI, AGP, for MG DOSHIT for Respondent No. 1
M/S PURNANAND & CO for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 17/6/98

C.A.V. JUDGMENT

The original petitioner was a gazetted officer and at the relevant time he was working as a Deputy District Development Officer, Kutch District Panchayat. He was aggrieved by an order dated 8.12.1986, a copy of

which has been annexed and marked Annexure A to the petition whereby, he was made to retire prematurely as per provisions of the BCSR. During pendency of the petition, he passed away and the petition is being prosecuted by his legal heirs as petitioners.

2. Ld. Advocate Shri Ajay Lakhia appearing for the petitioners has submitted that the original petitioner was illegally and arbitrarily made to retire before he had attained the age of superannuation. It has been submitted by him that the respondent authorities had taken the impugned action in an unjust and improper manner and the impugned order has not been passed in public interest. He has submitted that the original petitioner was made to retire under provisions of Sec. 161(1)(aa)(i).

3. He has first of all submitted that this Court has power to have judicial review of the impugned order and if the impugned order is found to be illegal, this Court can definitely set it aside. He has relied upon certain judgments delivered by this Court showing that this Court has power to quash such an order. Ld. AGP Shri Joshi has fairly submitted that it would be open to this Court to quash the impugned order if the said order is found to be illegal. In the above-referred circumstances, I do not think it necessary to refer to the judgments relied upon by ld. Advocate Shri Lakhia.

4. Another submission of the petitioners' advocate is with regard to legality and validity of the impugned order. He has mainly submitted that the respondent Government can exercise power with regard to compulsory retirement under the provisions of Rule 161(1)(aa)(i) of the BCSR only in public interest. He has submitted that as it has not been stated in the impugned order that the said order has been passed in public interest, the court should not presume that the impugned order has been passed in public interest. He has further submitted that the impugned order is not a reasoned order giving reasons for which the original petitioner was made to retire. He has also submitted that the said order is arbitrary and there is no evidence with regard to justification for passing the impugned order and, therefore, the impugned order deserves to be quashed and set aside.

5. He has relied on the judgment delivered in the case of K. Kandaswamy v. Union of India and another reported in 1995(6) SCC 162. He has submitted that as per law laid down by the Hon'ble Supreme Court, decision to retire an employee compulsorily cannot be taken

without having any evidence against the employee with regard to his integrity or unsuitability. He has also submitted that according to the said judgment if action by the concerned employer is arbitrary or if it is based on collateral grounds, the court can very well look into the matter pertaining to compulsory retirement of an employee and if the court is satisfied that there is no justifiable reason, the court can definitely set aside the order of compulsory retirement.

6. He has also relied upon a judgment delivered by this Court on 11.2.98 in LPA No. 1555/97 in SCA 4557/88 in case of Shri S.C. Shah Vs. The State of Gujarat. The petitioner of the said case was prematurely retired though there were no adverse entries in his service record. Moreover, in the affidavit in reply filed by the respondent-State it was only stated that the impugned order of retirement was passed after due deliberation and careful consideration. No other details were disclosed in the affidavit. In the above-referred circumstances, the Hon'ble Court had ultimately quashed and set aside the order of compulsory retirement.

7. On the other hand, ld. AGP Shri D.P. Joshi has drawn my attention to the contents of the affidavit-in-reply filed by Shri P.H. Panchal, Under Secretary to the Govt. of Gujarat in Panchayat and Rural Housing Department. It has been specifically stated in the said affidavit-in-reply that before passing the impugned order, guideline issued by the respondent Government with regard to review of the petitioner's case was duly followed. The service record of last 10 years of the original petitioner was duly considered. It also appears that adverse remarks were communicated to the original petitioner on two different occasions during the said period. Moreover, integrity of the original petitioner was also found to be doubtful. In the circumstances, due to adverse remarks and doubtful integrity of the original petitioner, the respondent Government had decided to retire the original petitioner prematurely as per provisions of Rule 161(1)(aa)(i) of the BCSR.

8. The learned A.G.P. has submitted that it would not be in public interest to continue a person having doubtful integrity on a class I post. He has further submitted that the original petitioner had to be placed under suspension because of certain financial irregularities committed by him in the matter of sanction of loans to certain citizens. He has also submitted that looking to the gravity of loss suffered by the State

because of irregularities committed by the original petitioner, the respondent government had to refer the matter to the Anti-Corruption Bureau. He has also submitted that during the last 10 years of service record of the original petitioner, two punishments were inflicted upon him and his integrity was not only doubtful but he was involved in a bribery case. It has been submitted that by an order dated 19.3.79 one increment of the original petitioner was stopped and thereafter by an order of punishment dated 13.12.82 one increment of the original petitioner was stopped with future effect. Thus, it has been submitted that the Review Committee had duly considered the said facts with regard to punishment imposed upon the original petitioner. It is pertinent to note that the first punishment referred to was imposed upon him as he had misused his power whereas the another punishment was because of acceptance of bribe of Rs. 50/-.

9. The Review Committee had carefully gone through the said record and only thereafter it had come to the conclusion that it was not in public interest to continue the original petitioner in active service after he had completed 55 years of age. The record/minutes pertaining to the Review Committee were placed before this Court and upon perusal thereof it is clear that the Review Committee had perused service record of the original petitioner for the last 10 years. It also appears from the record that only after careful consideration of all relevant facts the impugned decision was taken by the respondent government.

10. Ld. AGP has produced before this Court relevant record pertaining to minutes of the meeting of the Review Committee. Upon perusal of the relevant record, it appears that the original petitioner was having adverse remarks for the year 1980-81. Against the said adverse remarks, he had made a representation but the representation made by him was turned down by an order dated 28.3.81. Even for the period commencing from 1.4.82 to 17.3.83, he was having adverse remarks. The said adverse remarks were communicated to him and he had also made a representation against the said adverse remarks but the representation made by him was not accepted and the adverse remarks remained as they were. For the years 1982-83 it was observed in his confidential remarks that his integrity was doubtful and he was also involved in a scandal where the government had lost approx. Rs. 20 lakhs. It is also pertinent to note that by an order dated 13.12.82, he was punished as he was involved in a corruption case and his one increment

with future effect had been stopped. The said order was not challenged by the petitioner.

11. The above referred facts were duly considered by the Review Committee when service record of the petitioner was placed before it. Even if we objectively look at the facts of the case, it is an admitted fact that the original petitioner had already been punished once by an order dated 17.12.82 because of his involvement in a corruption case. Thus, one can say that he was not a man with integrity and to continue such a person in government service would not be in the public interest. In the years 1980-81 and 1982-83 the petitioner was having adverse remarks. Integrity of the petitioner was doubtful in the past and ultimately he was found to be corrupt and a final order of punishment was also passed due to his involvement in a corruption case. Certain criminal cases were pending against him. Even if we ignore the fact with regard to pendency of criminal cases, the material other than pendency of criminal cases was sufficient for the Review Committee to come to the conclusion that he should not be continued in service. Though it might not be just and proper on the part of this Court to look into subjective satisfaction of the committee, looking to the peculiar facts of the case, it is clear that the decision of the Review Committee is absolutely just, legal and proper.

12. In the above-referred circumstances, the impugned order dated 8.12.86 is found to be just, legal and proper and, therefore, the petition is dismissed. Rule is discharged with no order as to costs.

(HN)